

Wausau Business Insurance, one of the workers' compensation insurance carriers of Vermax of Florida, Inc., asks the Utah Labor Commission to review Administrative Law Judge La Jeunesse's award of permanent total disability compensation to N.H.M. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Judge La Jeunesse's decision of March 24, 2005, ordered Vermax and Wausau (referred to jointly as "Wausau" hereafter) to pay permanent total disability compensation to Mr. M.. In seeking Commission review of Judge La Jeunesse's decision, Wausau does not contest its liability for permanent total disability compensation but argues instead that it is entitled to offsets against that liability: a) the amount of permanent partial disability compensation it has paid to Mr. M.; and b) part of Mr. M.'s Social Security retirement benefits.

DISCUSSION

Offset for permanent partial disability compensation. Wausau's claim to an offset for permanent partial disability compensation previously paid to Mr. M. is based on § 413(4)(b) of the Act:

(4) This Subsection (4) applies to claims resulting from an accident or disease arising out of and in the course of the employee's employment on or after July 1, 1994.

(b) The employer or its insurance carrier may not be required to pay compensation for any combination of disabilities of any kind, as provided in this section and [Sections 34A-2-410](#) through [34A-2-412](#) and Part 5, Industrial Noise, in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate under Subsection (2).

(c) Any overpayment of this compensation shall be recouped by the employer or its insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

The proper application of §34A-2-413(4) to Mr. M.'s case and other similar cases is an important issue that has not previously been considered by the Commission. And, unfortunately, § 34A-2-413(4) is not a model of clarity. Judge La Jeunesse's decision does not address the application of § 34A-2-413(4) to Mr. M.'s circumstances and neither Wausau nor Mr. M.'s memoranda provide any analysis of the statute.

In light of the importance of this issue, the Commission believes the adjudicative process will

benefit if the parties submit their reasoned arguments to Judge La Jeunesse for his consideration. If the issue then comes before the Commission for review, the Commission will presumably have the benefit of adequate argument from the parties, as well as Judge La Jeunesse's decision.

Pursuant to § 34A-1-303(4)(a)(iii) of the Utah Labor Commission Act, the Commission remands this matter to Judge La Jeunesse. On remand, Judge La Jeunesse will conduct proceedings, if any are necessary, to obtain all relevant facts and the parties' arguments for application of § 34A-2-413(4) to Mr. M.'s case. Judge La Jeunesse will then issue a decision on that question, and will also address Wausau's right of offset against Mr. M.'s Social Security retirement benefits.

ORDER

The Commission remands this matter to Judge La Jeunesse for further proceedings and order consistent with this decision. It is so ordered.

Dated this 1st day of February, 2006.

R. Lee Ellertson
Utah Labor Commissioner